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09

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/528,031 03/17/00 SHYJAN

A MNI-056CPCN

000959  
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BOSTON MA 02109

HM12/0815

EXAMINER

BRUMBACK, R

ART UNIT	PAPER NUMBER
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1642

DATE MAILED:

08/15/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/528,031

Applicant(s)  
Shyjan

Examiner  
Brenda Brumback

Art Unit  
1642



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 48, 51, 76, 77, and 80-114 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 48, 51, 76, 77, and 80-114 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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**DETAILED ACTION**

***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 48, 51, 96-98, and 100, drawn to methods of detecting expression of or a mutation in an MRP- $\beta$  gene, classified in class 435, subclass 6.
  - II. Claims 76, 77, and 101-104, drawn to methods of mitigating aberrant expression of an MRP- $\beta$  gene, classified in class 514, subclass 44.
  - III. Claims 80, 87, and 88, drawn to isolated nucleic acids comprising SEQ ID NO:1 or encoding SEQ ID NO:2, classified in class 536, subclass 23.5.
  - IV. Claims 81-83, drawn to oligonucleotides that hybridize to SEQ ID NO:1, classified in class 536, subclass 24.5.
  - V. Claim 84, drawn to an isolated MRP- $\beta$  polypeptide comprising SEQ ID NO:2, classified in class 530, subclass 350.
  - VI. Claims 85 and 86, drawn to an antibody that binds to an isolated MRP- $\beta$  polypeptide comprising SEQ ID NO:2, classified in class 530, subclass 387.1.
  - VII. Claims 89-95, drawn to nonhuman transgenic animals, classified in class 800, subclass 2.
  - VIII. Claims 99 and 100 drawn to methods of characterizing a drug-resistant phenotype of a transformed cell, classified in class 435, subclass 7.5.

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- IX. Claim 105, drawn to a method of treating a multidrug resistant tumor, classified in class 424, subclass 133.1.
- X. Claims 106-108, drawn to methods of identifying a modulator of MRP- $\beta$ , classified in class 435, subclass 6.
- XI. Claims 110-112, drawn to MRP- $\beta$  modulators, classified in class 530, subclass 300 for example.
- XII. Claims 113-114, drawn to methods of improving the effectiveness of chemotherapy, classified in class 514, subclass 2 for example.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions III, I, VII, and X; IV and II; and VI, VIII, and IX are related as products and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the nucleic acids of Groups III and IV can be used in the materially different process of protein synthesis and the antibody of Group VI can be used in the materially different process of affinity purification of proteins.

The methods of Groups I, II, VIII-X, and XII have different modes of operation, different functions, and different effects and the products of Groups III-VII, and XI have different structures and different purposes, as well as different immunologic properties.

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Brumback whose telephone number is (703) 306-3220. If the examiner can not be reached, inquiries can be directed to Supervisory Patent Examiner Anthony Caputa whose telephone number is (703) 308-3995. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Examiner Brenda Brumback, Art Unit 1642 and should be marked "OFFICIAL" for entry into prosecution history or "DRAFT" for consideration by the examiner without entry. The Art Unit 1642 FAX telephone number is (703)-305-3014. FAX machines will be available to receive transmissions 24 hours a day. In compliance with 1096 OG 30, the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday or Federal Holiday with the District of Columbia, in which case the OFFICIAL date of receipt will be the next business day.

BB

August 13, 2001

*Brenda Brumback*  
Brenda Brumback,  
Patent Examiner